

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-30208-KPN

BRADFORD C. COUNCILMAN,)
Plaintiff)
)
vs.)
)
ALIBRIS, INC.,)
MICHAEL WARCHUT,)
PETER KROTKOV,)
Defendants)

DEFENDANT, MICHAEL WARCHUT'S, MOTION TO DISMISS

NOW COMES the defendant, Michael Warchut ("Warchut"), and hereby moves this Court to dismiss this Complaint, pursuant to Fed. R. Civ. P. 12(b)(6). As reasons for this Motion, Warchut states that: (1) the plaintiff has failed to allege sufficient facts to make out the elements of a malicious prosecution claim; (2) the plaintiff's abuse of process claim is filed after the statute of limitations has run and, in any event, the complaint fails to allege sufficient facts to maintain a claim for abuse of process; (3) the plaintiff's claim for intentional infliction of emotional distress is filed outside of the applicable statute of limitations; and, (4) the acts or conduct alleged as to Warchut which underlie each of the counts against him were absolutely privileged and cannot be used against him. The defendant submits with this Motion, and incorporates herein by reference, a Memorandum of Law in Support of the Defendant's Motion to Dismiss.

THE DEFENDANT
MICHAEL WARCHUT

By /s/ Dorothy Varon
 Jeffrey L. McCormick, Esq.
 Dorothy Varon, Esq. both of
 Robinson Donovan, P.C.
 1500 Main Street, Suite 1600
 Springfield, Massachusetts 01115
 Phone (413) 732-2301 Fax (413) 785-4658
 BBO No.: 329740
 BBO No.: 629609